

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1641

Introduced by Assembly Member Harman

February 22, 2005

An act to amend Section 1794.41 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1641, as amended, Harman. Consumer warranties.

The Song-Beverly Consumer Warranty Act provides consumer warranty protection to buyers of various products. Under the act, service contracts, as defined, covering any motor vehicle, home appliance, or home electronic product, may be offered for sale or sold in California only if specified elements exist, including, among other things, that the contract contains specified disclosures.

This bill would add to these elements the requirement that the seller of a service contract honor its obligations under the contract for the ~~full term specified~~ *longer of the full number of months or years stated* in the contract or *as* otherwise represented in writing to the buyer at the time of purchase. The bill also would require, if the contract provides that the seller's obligation may be satisfied by replacement of the product with a similar product, *or if the seller replaces the product in response to a claim under the contract*, that the seller's obligation under the contract would continue to apply to all replacement products provided to the buyer during the remaining term of the contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1794.41 of the Civil Code is amended to read:

1794.41. (a) No service contract covering any motor vehicle, home appliance, or home electronic product purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(1) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

(2) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer. If a service contract for a home appliance or a home electronic product is sold by means of a telephone solicitation, the seller may elect to satisfy the requirements of this paragraph by mailing or delivering the contract to the buyer not later than 30 days after the date of the sale of the contract.

(3) The contract is applicable only to items, costs, and time periods not covered by the express warranty. However, a service contract may run concurrently with or overlap an express warranty if (A) the contract covers items or costs not covered by the express warranty or (B) the contract provides relief to the buyer not available under the express warranty, such as automatic replacement of a product where the express warranty only provides for repair.

(4) The contract shall be cancelable by the buyer under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the buyer if the

1 buyer provides a written notice of cancellation to the person
2 specified in the contract, and if no claims have been made against
3 the contract. If a claim has been made against the contract either
4 within the first 60 days after receipt of the contract, or with
5 respect to a used motor vehicle without manufacturer warranties,
6 home appliance, or home electronic product, within the first 30
7 days after receipt of the contract, a pro rata refund, based on
8 either elapsed time or an objective measure of use, such as
9 mileage or the retail value of any service performed, at the
10 seller's option as indicated in the contract, shall be made by the
11 seller to the buyer if the buyer provides a written notice of
12 cancellation to the person specified in the contract.

13 (B) Unless the contract provides for a longer period for
14 obtaining a full refund, after the first 60 days after receipt of the
15 contract, or with respect to a contract covering a used motor
16 vehicle without manufacturer warranties, a home appliance, or a
17 home electronic product, after the first 30 days after the receipt
18 of the contract, a pro rata refund, based on either elapsed time or
19 an objective measure of use, such as mileage or the retail value of
20 any service performed, at the seller's option as indicated in the
21 contract, shall be made by the seller to the buyer if the buyer
22 provides a written notice of cancellation to the person specified
23 in the contract. In addition, the seller may assess a cancellation or
24 administrative fee, not to exceed 10 percent of the price of the
25 service contract or twenty-five dollars (\$25), whichever is less.

26 (C) If the purchase of the service contract was financed, the
27 seller may make the refund payable to the buyer, the assignee, or
28 lender of record, or both.

29 (5) The seller of the contract shall honor its obligations under
30 the contract for the ~~full term specified~~ *longer of the full number*
31 *of months or years stated* in the contract or as otherwise
32 represented in writing to the buyer at the time of purchase. If the
33 contract provides that the seller's obligation may be satisfied by
34 replacement of the product with a similar product, *or if the seller*
35 *replaces the product in response to a claim under the contract,*
36 the seller's obligation under the contract shall continue to apply
37 to all replacement products provided to the buyer during the
38 remaining term of the contract. Any provision of the contract that
39 limits the seller's obligation under the contract to the replacement

1 of the product *or to a limited number of responses under the*
2 *contract* shall be null and void as being contrary to public policy.

3 (b) Nothing in this section shall apply to a home protection
4 plan that is issued by a home protection company which is
5 subject to Part 7 (commencing with Section 12740) of Division 2
6 of the Insurance Code.

7 (c) The amendments to this section made at the 1988 portion
8 of the 1987–88 Regular Session of the Legislature that extend the
9 application of this section to service contracts on home
10 appliances and home electronic products shall become operative
11 on July 1, 1989.

12 (d) If any provision of this section conflicts with any provision
13 of Part 8 (commencing with Section 12800) of Division 2 of the
14 Insurance Code, the provision of the Insurance Code shall apply
15 instead of this section.